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Supreme Court, U.S.
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IN THE

Supreme Court of the United States

October Term, 1970

No. 843

JOHN C. LUZAITIS and ALFONSO SABINO,

Appellants,

vs.

MUNICIPAL COURT OF LOS ANGELES JUDICIAL DISTRICT, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA,

Appellee.

JURISDICTIONAL STATEMENT

John C. Luzaitis
4926 Marathon Street
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Appellants,

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MUNICIPAL COURT OF LOS ANGELES JUDICIAL DISTRICT, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA,

Appellee.

On Appeal From the Court of Appeal, Second Appellate District, State of California

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JURISDICTIONAL STATEMENT

OPINION BELOW

The opinion of the Court of Appeal, Second Appellate District - Division Four, of the State of California, dated March 17, 1970 is the only opinion by any Court below. By order of that Court it is "CERTIFIED FOR NONPUBLICATION" and

will not be published in any official or unofficial reports. A copy of the opinion is annexed hereto in the appendix.

JURISDICTION

The action was instituted by appellants in the Municipal Court of Los Angeles Judicial District, County of Los Angeles, State of California in January 1968 pursuant to California unlawful detainer statutes to recover possession of real property owned by appellants possession of which was and still is wrongfully witheld from appellants by two persons named Chater who, in spite of being gainfully employed in addition to receiving a substantially large income in the form of rent from real property owned in Los Angeles by themselves, refused to pay any rent to appellants after gaining possession of a residential apartment from appellants in December 1967 pursuant to a lease in writing.

After initiating the unlawful detainer action appellants, pursuant to California law, sought to recover possession only by way of proceedings in the action for partial summary judgment. The Municipal Court, contrary to California law, wrongfully denied appellants' motion for partial summary judgment and appellants then instituted an action in the Superior Court of the State of California for the County of Los Angeles against the Municipal Court for a writ of mandate to direct the lower court to issue a writ of possession to appellants.

The Superior Court, after violating appellants' rights under existing rules, procedures, statutory requirements and California law, denied the issuance of an alternative writ in the action which denial was appealed, by appellants, to the Court of Appeal, Second Appellate District, of the State of California.

Appellants contend that they have been denied due process and equal protection of the laws under the Fourteenth Amendment to the Constitution of the United States in and by all of the California Courts from the inception of the unlawful detainer action and mainly discriminated against in and by all of the California Courts on the grounds that appellants have been representing themselves in propria persona.

The judgment or decree sought to be reviewed is the order of the Supreme Court of the State of California dated and filed May 15, 1970 denying appellants petition for a hearing in that Court; the refusal of the Supreme Court of California to file appellants' Notice of Appeal to the Supreme Court of the Unites States submitted to that Court by appellants for filing on August 13, 1970; the order of Division Four of the Court of Appeal, Second Appellate District, State of California dated April 6, 1970 denying appellants' petition for a rehearing, including the opinion and judgment of the Court filed March 17, 1970 and all orders and rulings made in case number 2nd Civil 34524; all orders and rulings of the Superior Court of the State of California for the County of Los Angeles in civil case

Number 946043; and all orders and rulings of the Municipal Court of Los Angeles Judicial District, County of Los Angeles, State of California in civil case Number 467636.

On August 12, 1970 appellants filed notice of appeal in the office of the clerk of each of the courts possessed of records which are necessary and material to this appeal, namely: Court of Appeal, Second Appellate District, State of California; Superior Court of the State of California for the County of Los Angeles; and, Municipal Court of Los Angeles Judicial District, County of Los Angeles, State of California. On August 13, 1970 appellants notice of appeal was received in the Office of the Clerk of the Supreme Court of California at San Francisco. Said Court would not permit the filing of the notice on the grounds that it should be tendered for filing in the Court of Appeal above named.

Jurisdiction of the appeal is conferred on this Court by Title 28 of the United States Code, Section 1257(2). Violations of appellants' due process and equal protection rights under the Fourteenth Amendment to the Constitution of the United States are within the scope of review and jurisdiction conferred upon this Court. The allegations of the pleadings, the questions presented on appeal to the Court of Appeal of the State of California and the recitation of the facts in the opinion of that Court were of a nature to bring the case within the statutory provision believed to confer jurisdiction on this court. 28 U.S.C. 1257(2).

A copy of the judgment of the Court of Appeal, Second Appellate District, State of California, Division Four thereof is annexed hereto in the appendix. Also annexed hereto in the appendix are the order of the Court of Appeal denying a rehearing to appellants; a copy of the order of the Supreme Court of California denying appellants petition for a hearing in that Court; and a copt of the notice of appeal filed in each of the courts possessod of the record necessary and essential to this appeal.

This jurisdictional statement is being filed and the appeal docketed within 90 days of the order of the California Supreme Court denying a hearing and an extension of time by the Honorable Justice Hugo L. Black to October 12, 1970.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The provisions of the Fourteenth Amendment to the Constitution of the United States, Section 1, which reads: " ; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws." (Annexed hereto in the appendix.)

QUESTIONS PRESENTED

1. Is it a violation of due process under the Fourteenth Amendment to the

Constitution of the United States to deny issuance of a writ of possession to the owners of real property after a reasonable showing is made by substantial facts and circumstances that the owners are entitled to immediate possession of their real property?

2. Is it a violation of due process and equal protection of rights under the Fourteenth Amendment to the Constitution of the United States for a Court to be unduly partial to those parties of an action represented by counsel for the sole purpose of giving such party an undue and unwarranted advantage over other parties to the action who are both capable of and are representing themselves in propria persona in the action?

3. Is it a violation of due process and equal protection under the Fourteenth Amendment to the Constitution of the United States to unduly and unnecessarily delay determination of any question of the right to possession of real property when the action originates under the provisions of California unlawful detainer statutes and would and unreasonable delay be repugnant to California's unlawful detainer statutes?

4. Is a party to an action who chooses to represent himself or themselves in propria persona constitutionally protected and entitled to act in such capacity and be entitled same and/or equal courtesies and dignity enjoyed by attorneys of both ministerial and judicial officers of the

court where the action or proceedigs are pending and is it a violation of due process and equal protection under the Fourteenth Amendment to the Constitution of the United States for both ministerial officers and judicial officers of the court where the action is pending to resort to uncouth, disrespectful, degrading and reprehensible strategy and tactics, against litigants who choose to represent themselves in propria persona, for the sole purpose of pressuring such litigants to seek the representation in court by attorney?

STATEMENT OF THE CASE

Appellants filed an action of unlawful detainer in the Municipal Court of Los Angeles Judicial District, County of Los Angeles, State of California in January 1968 wherein two persons named Chater were named defendants. The action was filed because defendants failed to pay any rent when it first became due after aquiring possession of a residential apartment from appellants. An investigation by appellants at such time revealed the defendants to have substantial income but were not paying any of their numerous creditors and to be evading service of process in numerous actions filed against them for money. Defendants were served by appellants and since such time defendants have been and still are represented by an attorney at law named Jerome D. Sevenick. Appellants initiated the action in propria persona and have at all times represented them-

selves in that capacity. From the very onset the Court assumed a position adverse to appellants and partial to the attorney for the defendants. Without any request from defendants attorney nor notice to appellants the Court modified appellants pleadings and committed acts to benefit the attorney for defendants in his representative capacity in the action by the Court's assuming the dual role of acting as Judge in the action and attorney for the defendants in the place and stead of Mr. Savenick. Appellants were denied and deprived of numerous substantial rights and suffered numerous indignaties at both the hands of Mr. Savenick and the Court before appellants motion for partial summary judgment was denied whereby appellants only sought restitution of possession of the real property held by defendants. It appearing to appellants that the denial was adverse to appellants rights under California law a writ of mandate was then sought from the Superior Court of the State of California for the County of Los Angeles. From the inception of the action in the Superior Court appellants were confronted with severe hostility from ministerial and judicial officers of the Superior Court. Appellants initial petition filed in the Superior Court was cancelled the same day by order of a judge of that court and the filing fee was never refunded to appellants. Appellants were compelled to prepare another identical petition and pay another filing fee. The second petition was denied without the court's adhereing to the strict requirements governed by California statutes and procedures.

The Superior Court's denial of an alternative writ to appellants was totally unjustified and contrary to California law and it became necessary for appellants to appeal such denial to the Court of Appeal of the State of California, Second Appellate District where again appellants were confronted with severe invodious discrimination in numerous instances by both the ministerial officers of the Court as well as the Judicial officers. Contrary to California law that Court denied appellants motion for precedence and the Court held hearing in many cases where the appeal was not entitled to any precedence but were granted early hearings because attorneys were representing the parties to such actions and appellants were never afforded any of the rights to which appellants were entitled pursuant to California Code of Civil Procedure, Section 1179a. Appellants timely petition for rehearing was denied by the Court of Appeal and upon appellants filing a petition for a hearing in the Supreme Court of California only a fractional part of the record which was before the Court of Appeal was sent to the Supreme Court in violation of the rules on appeal which require that the full record be sent from the Court of Appeal to the Supreme Court upon the filing of a petition for hearing in the Supreme Court.

The ministerial officers of the Supreme Court of California were equally if not most abussive of appellants rights, The Supreme Court refused to afford appellants the opportunity of having the entire record brought up which had been

before the Court of Appeal before considering and ruling on appellants petition for a hearing. Appellants were denied a hearing in the Supreme Court of California in violation of appellants rights of due process and equal protection under the Fourteenth Amendment to the Constitution of the United States. This denial of a hearing resulted in the necessity for appellants to appeal to this Court.

From the inception of the action in the Municipal Court appellants did in all instances and in all courtsand on numerous occasions when the circumstances warranted raise the question of violation of appellants rights of due process and equal protection of the laws under the Constitution of the United States. In many instances this was done verbally by appellants and in some instances appellants have included questions of violation of appellants rights in various documents filed in each of the various California courts named herein.

This is only a concise statement of some of the abuse of substantial rights which appellants have suffered and been subjected to in the lower courts by both ministerial and judicial officers of the courts. In the interests of conciseness of this statement appellants do not waive any right they may have to have other matters considered by this Court which are not referred to or designated herein at this time.

THE QUESTIONS ARE SUBSTANTIAL

The federal questions are substantial. The California State Courts have all declined and/or refused to consider and rule upon the federal qestions raised by appellants in such courts. Appellants have been deprived of possession of real property and been deprived of any income therefrom since January 1968. Because of the invidious discrimination in California Courts against all persons who choose to represent themselves in propria persona in litigation both the question of a property owners rights to possession of real property with protection for him from unscrupulous lawyers and individuals and as a citizen of the United States the right to representation in propria persona in litigation in any court in California as well as any court in the United States are so substantial as to require plenary consideration with briefs on the merits and oral argument for their resolution

CONCLUSION

This appeal raises issues of fundamental importance to our system of both civil and criminal justice and the issues should be considered by the Court at this time. It is respectfully submitted that the Court should note probable jurisdiction of this appeal.

Dated: Los Angeles, California
October 10, 1970

/S/ JOHN C. LUZAITIS

John C. Luzaitis
Appellant - Pro Se

/S/ ALFONSO SABINO

Alfonso Sabino
Appellant - Pro Se

APPENDIX

OPINION OF THE COURT BELOW

The opinion of the Court of Appeal, Second Appellate District-Division Four, of the State of California, Civil No. 34524 dated March 17, 1970 is the only opinion by any Court below in this case.

APPEAL from an order of the Superior Court of Los Angeles County. Delbert E. Wong, Judge. Affirmed.

John C. Luzaitis and Alfonso Sabino, in pro per., for Petitioners and Appellants.

No appearance for Defendant and Respondent.

Appellants filed in the superior court a petition for writ of mandate. The petition alleged in substance that appellants had filed in the municipal court a proceeding in unlawful detainer against two persons named Chater; that appellants had moved for partial summary judgment in the municipal court case, which motion was denied. Appellants alleged that the decision of the municipal court was contrary to law, and that appellants were entitled to have that court issue a writ of possession in their favor. The petition prayed that the superior court issue a writ of mandate commanding the municipal court to issue a writ of possession and grant other relief to which appellaants are entitled in the municipal court action.

The superior court examined the petition and on January 15, 1969, made a minute order refusing to issue any alternative writ, upon the ground that appellants' petition was on its face insufficient. Appellants have elected to treat this order as a final judgment of dismissal. (See Wenzler v. Municipal Court (1965) 235 Cal.App.2d 128.) This is appellants' appeal from that order. The notice of appeal ambiguously refers to other orders made by the trial court, none of which can be identified as appealable.

We note first that appellants do not allege that they have ever requested a trial of their unlawful detainer case in the municipal court, or that that court has refused or will refuse to hear the case if appellants request a trial. The basis of appellants' petition is that the municipal court should have granted relief on their motion for partial summary judgment.

Code of Civil Procedure section 1086 provides that the writ of mandate "must be issued in all cases where there is not a plain, speedy, and adequate remedy, in the ordinary course of law." Where there is an adequate remedy by other proceedings, mandamus should not be used. (See McPherson v. City of Los Angeles (1937) 8 Cal.2d 748, 751; Barnard v. Municipal Court (1956) 142 Cal.App.2d 324.)

Appellants had an adequate remedy by setting their case for trial in the municipal court. Before any court, sup-

erior or municipal, could grant the relief which appellants seek against the Chaters, such court would be required to conduct a hearing and pass upon whatever issues of fact or law were presented by the pleadings. There is no reason to believe that a mandate proceeding in the superior court would be any more speedy or adequate than the regular trial in the municipal court.

Appellants have asked this court to augment the record on appeal by including the entire superior court file; and they have asked this court to consider the contents of the municipal court file. We have examined both files. Neither contains anything which needs to be considered on this appeal. The motions are therefore denied.

Appellants' petition for a writ of mandate was properly denied. The order of January 15, 1969, refusing the alternative writ is affirmed. All other purported appeals are dismissed.

CERTIFIED FOR NONPUBLICATION.

FILES, P.J.

We concur:

JEFFERSON, J.

KINGSLEY, J.

ORDER DENYING REHEARING

Court of Appeal, Second Appellate District-Division Four, of the State of California, Los Angeles, April 6, 1970.

34524--Luzaitis, et al. v. Municipal Court, Los Angeles County. [Mar. 17, 1970.] The Court: Petition for rehearing denied.

ORDER DENYING HEARING

Order Denying Hearing after judgment by the Court of Appeal 2nd District, Division 4, Crim No. 34524
In The Supreme Court of the State of Califernia In Bank - Luzaitis et al v. Municipal Court, Los Angeles Judicial District - Appellants' petition for hearing DENIED. Filed May 15, 1970, William I. Sullivan Clerk.

WRIGHT
Chief Justice

NOTICE OF APPEAL

Notice of Appeal to the Supreme Court of the United States

Notice is hereby given that JOHN C. LUZAITIS and ALFONSO SABINO are the parties taking this appeal and do hereby appeal to the Supreme Court of the United States from: the final order of the Supreme Court of the State of California denying to appellants a hearing on the opinion and judgment of appeal No. 2nd Civil 34524 filed on March 17, 1970 in the Court of Appeal, Second Appellate District, State of California, affirming the orders and judgment of the Superior Court of the State of California dated and filed January 15, 1969 in Superior Court case No. 946043; from all orders and judgments of the Court of Appeal of the State of California for the Second Appellate District in appeal No. 2nd Civil 34524 including those designated by date above; from all orders and judgments of the above designated Superior Court made in and relative to case No. 946043 including its orders and judgment designated by date above; from all orders and judgments of the Municipal Court of the Los Angeles Judicial District, County of Los Angeles, State of California in municipal court case No. 467636 entitled Luzaitis and Sabino v. Chater et al.; from the denial to appellants of substantial rights, statutory rights and constitutional rights including the invidious discriminations against appellants in and by all of said Courts. namely, the Supreme Court of the State

of California; the Court of Appeal for the Second Appellate District of the State of California; the Superior Court of the State of California for the County of Los Angeles; and, the Municipal Court of the Los Angeles Judicial District, County of Los Angeles, State of California.

This appeal is taken pursuant to United States Code, Section 1257(2).

Notice of Appeal is being filed by appellants with the clerk of each of the above named courts because each of said courts are possessed of records which are necessary to the appeal and which appellants shall request to be certified and made part of the record on appeal to be transmitted to the Supreme Court of the United States.

/S/ JOHN C. LUZAITIS
John C. Luzaitis
Appellant - In Propria Persona

/S/ ALFONSO SABINO
Alfonso Sabino
Appellant - In Propria Persona

AFFIDAVIT OF SERVICE

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.

I, JOHN C. LUZAITIS, depose and say:

That I am one of the appellants above named; that Mr. Sabino and I are representing ourselves in the action pro se; that on the Twelfth day of August

1970 I served the within: "NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES" on the respondent and the real adverse parties by enclosing one copy of the typewritten notice of appeal in each of two envelopes; I affixed to each envelope first class postage, fully prepaid; and I deposited each of the envelopes in the United States Mail at Los Angeles, California addressed to the attorneys of record for each of said parties. The envelope to the attorney for the respondent was addressed as follows:

JOHN D. MAHARG, County Counsel
648 Hall of Administration
500 West Temple Street
Los Angeles, California 90012

The envelope to the attorney for the real adverse parties was addressed as follows:

JEROME D. SAVENICK, Attorney at Law
Union Bank Plaza, Suite 414
15233 Ventura Boulevard
Sherman Oaks, California 91403

All parties required to be served have been served.

/S/ JOHN C. LUZAITIS
John C. Luzaitis

SUBSCRIBED AND SWORN TO before me at Los Angeles, California this Twelfth day of August 1970

/S/ E. HELENE JONES

(NOTARY SEAL)

The foregoing notice of appeal with affidavit of service attached thereto was filed on August 12, 1970 in the office of the clerk of each court as follows: Court of Appeal, Second Appellate District, State of California, Clay Robbins Jr. Clerk; Superior Court of the State of California for the County of Los Angeles, William G. Sharp County Clerk; The Municipal Court of Los Angeles Judicial District, County of Los Angeles, State of California, George J. Barbour Clerk.

The same notice of appeal with affidavit of service attached was received in the office of the Clerk of the Supreme Court of California at San Francisco, California on August 13, 1970. Said office refused to file the notice of appeal stating as its reason "the notice should be tendered for filing in the Court of Appeal, Second Appellate District,"

JUDGMENT OF COURT OF APPEAL

The judgment of the Court of Appeal, Second Appellate District, State of California certified to on May 18, 1970 by the Clerk of the Court of Appeal at which time such judgment was remitted to the lower court in appeal No. 2nd Civil 34524, Luzaitis et al., v. Municipal Court Los Angeles County reads:

"On appeal from the Superior Court in and for the County of Los Angeles.

The above entitled cause having been fully argued, submitted and taken under advisement.

"It is ordered, adjudged and decreed by the Court that appellants' petition for a writ of mandate was properly denied. The order of January 15, 1969 refusing the alternative writ is affirmed. All other purported appeals are dismissed. Costs to Respondent."

"I Clay Robbins Jr. Clerk of the Court of Appeal, Second Appellate District, State of California do hereby certify that the foregoing is a true copy of an original judgment entered on March 17, 1970, and now remaining of record in my office.
Dated May 18, 1970.

CLAY ROBBINS Jr. Clerk
By /S/ FRANK STAPLETON
Deputy

AMENDMENT XIV
UNITED STATES CONSTITUTION

Section 1. ; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

IN THE

Supreme Court of the United States

October Term, 1970

No.

JOHN C. LUZAITIS and ALFONSO SABINO,

Appellants,

vs.

MUNICIPAL COURT OF LOS ANGELES JUDICIAL DISTRICT, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA,

Appellee.

AFFIDAVIT OF SERVICE

State of California)
County of Los Angeles) ss.

I, ALFONSO SABINO, depose and say:

That I am one of the appellants above named; That Mr. Luzaitis and I are representing ourselves in the action pro se; that on the Eleventh day of October 1970 I served the within "JURISDICTIONAL STATEMENT"

on the appellee and on Mike Chater and Ella Chater, the real adverse parties, by enclosing three copies of the printed statement in each of two envelopes; I then sealed each of the envelopes; I affixed to each envelope first class postage, fully prepaid; and, I did then deposit each of the envelopes in the United States Mail at Los Angeles, California addressed to the attorneys of record for each of said parties.

The envelope to the attorney for the appellee was addressed:

JOHN D. MAHARG, County Counsel
648 Hall of Administration
500 West Temple Street
Los Angeles, California 90012

The envelope to the attorney for the real adverse parties was addressed:

JEROME D. SAVENICK, Attorney at Law
Union Bank Plaza, Suite 414
15233 Ventura Boulevard
Sherman Oaks, California 91403

All parties required to be served have been served.

/S/ ALFONSO SABINO

Alfonso Sabino

SUBSCRIBED AND SWORN TO before me at Los Angeles, California this 11th day of October 1970.